



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5952 7887

4-5-13
06
Supervisor David Hamlin
44 Park Street
Port Crane, New York 13833

Re: **Administrative Order CWA-02-2013-3008**
Town of Fenton Municipal Separate Storm Sewer System ("MS4")
SPDES Permit No. NYR20A078

Dear Supervisor Hamlin:

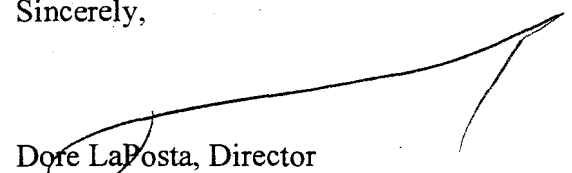
The United States Environmental Protection Agency ("EPA"), Region 2, has made a finding that the above-named municipality, Town of Fenton ("Fenton" or "Town"), is in violation of the Clean Water Act (33 U.S.C. §1251 et seq) ("CWA" or "Act") for New York State Department of Environmental Conservation ("NYSDEC") State Pollutant Discharge Elimination System ("SPDES") violations as described in the findings of this ORDER. Enclosed are two (2) originals of this ORDER, issued pursuant to Sections 309(a) of the Act, which detail the findings.

Also enclosed is the compliance audit report for the MS4 audit conducted by EPA at the above mentioned facility on April 10 & 11, 2012.

Please acknowledge receipt of this ORDER on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the enclosed ORDER may subject the municipality to civil/criminal penalties pursuant to Section 309 of the Act. Failure to comply with this ORDER shall also subject the municipality to ineligibility for participation in work associated with Federal contracts, grants or loans.

If you have any questions regarding this ORDER, please contact Mr. Douglas McKenna, Water Compliance Branch Chief, at (212) 637-4244 or Christy Arvizu at (212) 637-3961 or via e-mail at arvizu.christy@epa.gov.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joseph DiMura, NYSDEC
Joseph Zalewski, NYSDEC Region 7

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Town of Fenton
44 Park Street
Port Crane, New York 13833

SPDES Permit No. NYR20A078

Proceeding pursuant to Section 309(a) of the
Clean Water Act, 33 U.S.C. §1319(a)

ADMINISTRATIVE
COMPLIANCE ORDER

CWA-02-2013-3008

The following Findings of Violation are made, and Order for Compliance ("Order") issued, pursuant to Section 309(a) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §1319(a). This authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2, and since further redelegated to the Director, Division of Enforcement and Compliance Assistance, Region 2, EPA.

A. Legal Authority

1. Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a), prohibits the discharge of pollutants from a point source into waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA 33 U.S.C. §1342.
2. Section 402 of the CWA, 33 U.S.C. §1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.
3. Section 402 of the CWA, 33 U.S.C. §1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. §1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. §1342(b), a New York State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.

4. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. §1362(5) to include an individual, corporation, partnership, association or municipality.
5. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. §1362(6) to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
6. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. §1362(14) to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
7. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. §1362(7) to include the waters of the United States.
8. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. §1362(12) to include any addition of any pollutant to navigable waters from any point source.
9. "GIS" or "Geographic Information Systems" is defined as a computer system capable of capturing, storing, analyzing, and displaying geographically referenced information; that is, data identified according to location.
10. Section 402(p) of the CWA, 33 U.S.C. §1342(p) sets forth the requirements for the discharge of stormwater, including discharges of stormwater from Municipal Separate Storm Sewer Systems ("MS4s").
11. 40 C.F.R. §122.26(b)(8), defines an MS4 as a "conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by State law)...that discharges into waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works..."
12. 40 C.F.R. §122.26(b)(3) defines "incorporated place," in part, as a city, town, township, or village that is incorporated under the laws of the State in which it is located.
13. 40 C.F.R. §122.26(b)(16)(ii) defines "small municipal separate storm sewer system," in part, as not defined as "large" or "medium" MS4s.
14. Pursuant to 40 C.F.R. §122.32(a)(1), all small MS4s located in an "urbanized area" (as determined by the latest Decennial Census by the Bureau of Census) are regulated small MS4s.
15. 40 C.F.R. §§122.33(a) and (b) require operators of regulated small MS4s to seek authorization to discharge under the applicable NPDES general permit issued by the

permitting authority, by submitting a Notice of Intent ("NOI") for coverage under such permit.

16. NYSDEC issued a SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-02-02) on January 8, 2003. The SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems ("Permit") expired on January 8, 2008 and was administratively extended until the Permit was reissued on May 1, 2008 as GP-08-002. The Permit was subsequently renewed on May 1, 2010 as GP-0-10-002 and will expire on April 30, 2015.

B. Factual Background

1. The Town of Fenton ("Fenton" or "Town") is a municipal corporation chartered under the laws of the State of New York, and as such, the Town of Fenton is a "person," as defined in Section 502(5) of the CWA, 33 U.S.C. §1362(5), and 40 C.F.R. §122.2, and is an "incorporated place" as defined in 40 C.F.R. §122.26(b)(3).
2. Fenton owns/operates the Municipal Separate Storm Sewer, located in the Town of Fenton, Broome County, New York and is an "owner or operator" within the meaning of 40 C.F.R. §122.2.
3. The MS4 in Fenton is a small MS4 located in a urbanized area within the meaning of 40 C.F.R. §122.26(b)(16)(ii) and 40 C.F.R. §122.32(a)(1).
4. An MS4 is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. §1362(14).
5. Fenton's MS4 discharges stormwater, a pollutant within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6), to Osbourne Creek and tributaries, Page Brook and tributaries, Phelps Creek, and the main branch of the Chenango River, waters of the United States within the meaning of 502 of the CWA, 33 U.S.C. §1362, and 40 C.F.R. §122.2, and as such, discharges pollutants within the meaning of Section 502(12) of the CWA, 33 U.S.C. §1362(12).
6. The Town submitted a Notice of Intent under the SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-02-02) on February 27, 2003. The NOI was received by NYSDEC on March 3, 2003 and issued SPDES Permit No. NYR20A078. Upon expiration of GP-02-02 on January 8, 2008, permit coverage was automatically carried over to the reissued NYSDEC SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-08-002), which became effective on May 1, 2008 and expired on April 30, 2010. At that time, permit coverage was automatically carried over to the reissued NYSDEC SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-0-10-002) which went into effect on May 1, 2010 and will expire on April 30, 2015.
7. EPA, accompanied by its contractor and NYSDEC, conducted a compliance audit of the Town's MS4 on April 10-11, 2012.

8. NYSDEC General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-0-10-002), effective on May 1, 2010, was the effective permit at the time of the audit.

C. Findings of Violation

During the compliance audit on April 10 – 11, 2012 and documented in the accompanying audit report, EPA observed the following violations of the Town of Fenton's SPDES permit (NYR20A078):

1. Part VII.A.3.b.ii of the Permit states that the preliminary boundaries of the Town's storm sewersheds should have been determined using GIS or other tools by March 9, 2010. During the audit, it was observed that the Town had not identified the preliminary boundaries of its storm sewershed as the Town Engineer stated that it had not been done. Therefore, the Town of Fenton failed to determine and map the preliminary boundaries of the Town's storm sewersheds, in violation of Part VII.A.3.b.ii of the Permit.
2. Part VII.A.3.c of the Permit requires that the Town "field verify outfall locations." During the audit, the Town stated that while outfall locations were mapped on the Town's storm sewer system map, the Town had not formally field verified outfall locations. Therefore, the Town of Fenton failed to field verify outfall locations, in violation of Part VII.A.3.c of the Permit.
3. Part VII.A.3.d of the Permit requires that the Town "conduct an outfall reconnaissance inventory...addressing every outfall within the urbanized area and additionally designated area within the covered entity's jurisdiction at least once every five years, with reasonable progress each year." During the audit, it was observed that the Town had not conducted an outfall reconnaissance inventory of every outfall within the urbanized area and any additionally designated areas within the Town's jurisdiction, nor had the Town demonstrated reasonable progress each year since 2008. Therefore, the Town of Fenton failed to conduct an outfall reconnaissance inventory, in violation of Part VII.A.3.d of the Permit.
4. Part VII.A.3.e of the Permit requires that the Town map new outfalls as they are constructed or newly discovered within the urbanized area and additionally designated area. During the audit, the EPA audit team observed a recently constructed outfall located approximately 350 feet northeast of the east end of Fenton Avenue on Phelps Creek. The outfall was not depicted on the Town's outfall map. Therefore, the Town of Fenton failed to map new outfalls as they are constructed or newly discovered, in violation of Part VII.A.3.e of the Permit.
5. Part VII.A.3.g of the Permit requires that the Town "develop (*for newly authorized MS4s*) and implement a program to detect and address non-stormwater discharges, including illegal dumping, to the small MS4 in accordance with current assistance and guidance documents from the State and EPA. The program must include: procedures for identifying priority areas of concern (geographic, audiences, or otherwise) for the IDDE program; description of priority areas of concern, available equipment, staff, funding, etc..." According to the Town's SWMP plan, the Town will "[m]aintain a prioritized list

of outfalls of inspection, ranked on a 5-tier priority list.” Furthermore, the Town’s SWMP lists five priority classifications and provides general procedures for identifying priority areas of concern. Prior to the audit, the EPA audit team formally requested a priority list of risk areas in the storm drain system for the most recent reporting year; however, the Town did not provide the requested information. During the audit, the Town Engineer stated that the Town did not maintain a list of priority outfalls, nor had the Town identified priority areas of concern within its MS4. Therefore, the Town of Fenton failed implement a program to detect and address non-stormwater discharges, including illegal dumping, to the small MS4, in violation of Part VII.A.3.g of the Permit.

6. Part VII.A.4.a.vii of the Permit requires that the Town develop (*for newly authorized MS4s*), implement and enforce a program that “describes procedures for SWPPP [Stormwater Pollution Prevention Plan] review with consideration of potential water quality impacts and review of individual SWPPPs to ensure consistency with State and local sediment and erosion control requirements.” During the audit, it was observed that the Town had not developed a procedure for SWPPP review. The Town Engineer explained that if there was applicable construction activity, the Town would conduct SWPPP or erosion control plan reviews using the SWPPP review checklist utilized by NYSDEC Region 7 to document the reviews. Therefore, the Town of Fenton failed to develop, implement and enforce a construction site stormwater runoff control program which includes describing SWPPP review procedures, in violation of Part VII.a.4.vii of the Permit.
7. Part VII.A.4.a.viii of the Permit requires that the Town develop (*for newly authorized MS4s*), implement and enforce a construction site stormwater runoff control program that “describes procedures for receipt and follow up on complaints or other information submitted by the public regarding construction site stormwater runoff.” During the audit, it was observed that the Town had not developed a formal procedure for receiving or following up on complaints or other information submitted by the public regarding construction site stormwater runoff. Therefore, the Town of Fenton failed to develop procedures for construction site stormwater runoff complaint response and/or follow-up, in violation of Part VII.A.4.viii of the Permit.
8. Part VII.A.5.a.v of the Permit requires that the Town develop (*for newly authorized MS4s*), implement and enforce a post-construction stormwater management program that “describes procedures for SWPPP [Stormwater Pollution Prevention Plan] review with consideration of potential water quality impacts and review of individual SWPPPs to ensure consistency with State and local post-construction stormwater requirements.” During the audit, it was observed that the Town had not developed a procedure for SWPPP review for post-construction stormwater requirements. The Town Engineer explained that if construction activity to which post-construction stormwater requirements would apply, the Town would conduct SWPPP or erosion control plan reviews using the SWPPP review checklist utilized by NYSDEC Region 7. Therefore, the Town of Fenton failed to develop, implement and enforce a program which includes SWPPP post-construction review procedures, in violation of Part VII.A.5.a.v of the Permit.

9. Part VII.A.6.a.ii of the Permit requires that the Town perform and document a self assessment of all municipal operations addressed by the SWMP at a minimum frequency of once every three years. During the audit, Town staff stated that no formal self-assessment of the Town's municipal operations had been conducted. The Town Engineer and Superintendent stated that the facilities were inspected two or three times per year but inspections were not documented. Therefore, the Town of Fenton failed to conduct and document self assessments of municipal operations as required, in violation of Part VII.A.6.a.ii of the Permit.
10. Part VII.A.6.a.iii of the Permit requires that the Town develop (*for newly authorized MS4s*) and implement a pollution prevention / good housekeeping program for municipal operations and facilities that "determines management practices, policies, procedures, etc. that will be developed and implemented to reduce or prevent the discharge of (potential) pollutants." During the audit, the Town Engineer provided the draft version of the "Pollution Prevention / Good Housekeeping for Municipal Operations in Broome County: Best Management Practices" which had been provided to the Town by the Broome-Tioga Stormwater Coalition. However, the Town Engineer stated to the EPA audit team that the draft document had not been adopted by the Town. Therefore, the Town of Fenton failed to develop and implement management practices, policies, procedures, etc. to reduce or prevent the discharge of pollutants, in violation of Part VII.A.6.a.iii of the Permit.
11. Part VII.A.6.a.vi of the Permit requires that the Town develop (*for newly authorized MS4s*) and implement a pollution prevention / good housekeeping program for municipal operations and facilities that "includes an employee pollution prevention and good housekeeping training program and ensures [sic] that staff receive and utilize training." During the audit, it was observed that the Town did not develop a structured education and training program that ensures employees receive the training that is needed. Therefore, the Town of Fenton failed to develop an employee pollution prevention and good housekeeping training program, in violation of Part VII.A.6.a.vi of the Permit.

D. Ordered Provisions

Based on the Findings of Violation set forth above, and pursuant to Section 309(a) of the CWA, 33 U.S.C. §1319(a), the Town of Fenton is hereby ORDERED to take the following actions:

1. Immediately upon receipt of the original copies of this Order, a responsible official of the Town of Fenton shall complete and sign the acknowledgment of receipt of one of the originals of the Order and return said original to Chief, Water Compliance Branch, Division of Enforcement and Compliance Assistance, in the enclosed envelope, to the address listed below, in paragraph D4.
2. The Town of Fenton shall complete the following items in accordance with the schedule listed below:

<u>Item</u>	<u>Completion</u>
i. Immediately map, and submit to EPA and NYSDEC, the preliminary boundaries of the storm sewersheds of the Town's urbanized area, and any additionally designated area within the Town's jurisdiction, as required by Part VII.A.3.b.ii of the Permit.	June 30, 2013
ii. Field verify outfall locations, as required by Part VII.A.3.c of the Permit.	June 30, 2013
iii. Conduct an outfall reconnaissance inventory ... addressing every outfall within the urbanized area and additionally designated area within the Town of Fenton, as required by Part VII.A.3.d of the Permit.	June 30, 2013
iv. Update the Town's outfall map with all outfalls within the urbanized area and additionally designated area.	June 30, 2013
v. Develop and submit to EPA and NYSDEC, a list of priority areas of concern for the Town's illicit discharge program in accordance with the procedures outlined in the Town's SWMP Plan and as required by Part VII.A.g of the Permit. Program shall be implemented and enforced upon EPA approval.	February 28, 2013
vi. Develop and submit to EPA and NYSDEC, procedures for Stormwater Pollution Prevention Plan (SWPPP) review with consideration of potential water quality impacts and review of individual SWPPPs to ensure consistency with State and local sediment and erosion control requirements, as required by Part VII.a.4.vii of the Permit. Procedures shall be implemented after EPA approval.	February 28, 2013
vii. Develop and submit to EPA and NYSDEC, construction site stormwater runoff control program that describes procedures for receipt and follow up on complaints or other information submitted by the public regarding construction site stormwater runoff, as required by Part VII.A.4.viii of the permit. Procedures shall be implemented after EPA approval.	February 28, 2013
viii. Develop and submit to EPA and NYSDEC, procedures for Stormwater Pollution Prevention Plan (SWPPP) review with consideration of potential water quality impacts and review of individual SWPPPs to ensure consistency with State and local post-construction stormwater requirements as required by Part VII.A.5.v of the Permit. Procedures shall be implemented after EPA approval.	February 28, 2013
ix. Submit a written response to EPA regarding deficiencies identified in Section 2.4.1 of the Audit Report; the Town may also include any questions or comments regarding other findings of the report.	February 28, 2013

x.	Perform a self assessment of all municipal operations addressed by the SWMP to determine sources of pollutants and identify the municipal operations and facilities that will be addressed by the pollution prevention / good housekeeping program, as required by Part VII.A.6.a.ii of the Permit. Copies of self-assessment reports must be sent to EPA and NYSDEC.	February 28, 2013
xi.	Develop and submit to EPA and NYSDEC, management practices, policies, procedures that will be developed and implemented to reduce or prevent the discharge of (potential) pollutants, as required by Part VII.A.6.a.iii of the Permit. Management practices, policies, procedures shall be implemented after EPA approval.	February 28, 2013
xii.	Develop and submit to EPA and NYSDEC, an employee pollution prevention and good housekeeping training program that ensures employee training is provided to staff and utilized as required by Part VII.A.6.a.vi of the permit. Program shall be implemented upon EPA approval.	February 28, 2013
xiii.	Submit bi-monthly progress reports to EPA outlining all activities undertaken and costs associated with compliance with this Order until final compliance is achieved.	March 31, 2013 May 31, 2013 July 31, 2013

3. Any document submitted by the Town of Fenton as part of this Order shall be sent by certified mail or its equivalent and shall be signed by an authorized representative of the respective entity (see 40 CFR §122.22), and shall include the following certification:

"I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations."

4. All submissions required by this Order shall be sent to:

Douglas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007

With a copy mailed to:

Joseph Zalewski, Regional Water Engineer
NYSDEC Region 7 Office
615 Erie Boulevard West
Syracuse, NY 13204

E. General Provisions

1. Any documents to be submitted by the Town of Fenton as part of this Order shall be sent by certified mail or its equivalent and shall be signed by an authorized representative of the respective entity (see 40 CFR §122.22), and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

2. The Town of Fenton shall have the opportunity, for a period of twenty (20) days from the date of receipt of this Order, to confer, regarding the Ordered Provisions, with the following designated Agency representative:

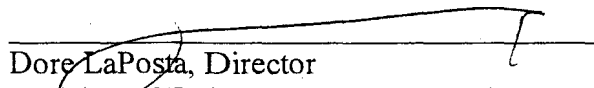
Douglas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 20th floor
New York, NY 10007-1866
(212) 637-4244

3. The Town of Fenton has the right to seek immediate federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, which provides the grounds for such review.
4. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
5. Notice is hereby given that, should EPA commence an action in a United States District Court for a violation of any Ordered Provision of this Order, the Town of Fenton may be subject to (1) civil penalties up to \$37,500 per day for each day of violation, pursuant to

Section 309(d) of the CWA, 33 U.S.C. §1319(d), and/or (2) injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. §1319(b), as imposed by the Court.

6. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
7. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

December 18, 2012
Date


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Town of Fenton
44 Park Street
Port Crane, NY 13833

Respondent

Proceeding pursuant to §309(a) of the Clean
Water Act, 33 U.S.C. §1319(a)

ADMINISTRATIVE
COMPLIANCE ORDER

CWA-02-2013-3008

ACKNOWLEDGMENT OF RECEIPT OF
ADMINISTRATIVE COMPLIANCE ORDER

I, _____, an official with the Town of Fenton with the title of,

_____, do hereby acknowledge the receipt of copy of the

ADMINISTRATIVE COMPLIANCE ORDER, Town of Fenton, CWA-02-2013-3008.

DATE: _____

SIGNED: _____